IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO.22 OF 2001

The Commissioner of Customs
(Import), Bombay .. Applicant.

V/s.

M/s.VXL India Limited .. Respondent.

Mr.S.M. Shah for the applicant.

Mr.K.B. Swamy i/b. Jyoti Saigal for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 23RD MARCH, 2005.

P.C. :

Heard learned counsel for the applicant. The applicant is praying that the statement of facts be called from the Customs, Excise and Gold (Control) Appellate Tribunal (now CESTAT) for authoritative decision of this Court in the question framed in para 8, reading as under :

> Whether the Tribunal was right in law in deciding that the duty ought to be collected from the original importer of the goods who is absconding and that the buyer of the goods has no liability towards payment of duty while buying such tainted goods ?

2. The contention raised in the aforesaid

question is dealt with by the Tribunal in para 7 of its order, which reads as under :

> ". Section 28 of the Act provides for recovery of duty short levied on imported goods. Clause (2) of Section 125 of the Act provides that where any goods are ordered to be confiscated, the owner of the goods shall, in addition to redemption fine, be liable to pay any duty payable. In our judgment, both these provisions cannot be invoked simultaneously. It is the importer of goods who is liable to pay duty on the goods that he has imported. Customs duty is a duty on import. Hence, obviously, no one else normally be required to pay that duty. The definition of the term 'imported' in Section 2 of the Act as including at any time between the importation of the goods and their clearance for home consumption, their owner is significant. It is evidently intended to provide for recovery of duty on goods imported by one person, deposited in a bounded warehouse and cleared by another to whom they are sold or otherwise transferred. By this definition, that second person is deemed to be the importer of the goods and hence liable to pay duty. The provisions of sub-section (2) of Section 25 of the Act are an exception to this principle. These provisions have evidently been introduced in order to recovery duty on goods which have been imported in an unauthorised manner without having been declared on their arrival in the country. However, it is not permissible, where the importer is known and in fact has been issued a notice proposing recovery of duty, simultaneously to demand duty from another person who is not the importer. The provisions of Section 125(2) of the Act are not intended to be used as a substitute for the provisions of Section 28 when circumstances prevent resort to that section. The demand for duty before us is therefore without authority of law."

3. We concur with the view taken by the Tribunal and do not think that the question referred to hereinabove needs any consideration at the hands of

this Court.

4. The application is, therefore, dismissed in limine with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)